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October 20, 2000

Via Hand-Delivery

K. David Waddell

Executive Secretary

Tennessee Regulatory Authority

460 James Robertson Parkway

Nashville, Tennessee 37219

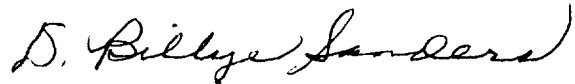
Re: Application of Memphis Networkx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement Between MLGW and A&L regarding Joint Ownership of Memphis Networkx, LLC; Docket No.99-00909 – Filing of Late Exhibit

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the late filed exhibit 108. A copy of this exhibit was supplied to the court reporter on October 17, 2000 at the hearing on this matter.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



D. Billye Sanders

Attorney for Memphis Light Gas & Water
Division and Memphis Networkx, LLC

DBS:lmb

w/Enclosure

cc: Parties of Record
Charlotte Knight Griffin
Ward Huddleston
John Knox Walkup, Esq.

POSTED
10/24/00

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 20th day of October, 2000, a true and correct copy of the foregoing was delivered by hand delivery, facsimile, or U.S. Mail postage pre-paid to the Counsel of Record listed below.

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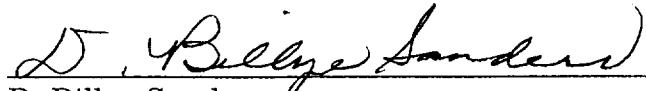
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Attorney for NEXTLINK, Tennessee, Inc.


D. Billye Sanders

CONTRACT NO. _____

FIBER OPTICS AGREEMENT

THIS AGREEMENT made and entered into as of Sept. 6 2000 ("Contract Date"), between Memphis Light, Gas and Water, a Division of the City of Memphis, Tennessee, hereinafter called MLGW, and Memphis Network LLC, a _____ Corporation with its principal offices located at 7555 Appleton Center Dr. hereinafter called LICENSEE.

Memphis, TN 38132
WITNESSETH

WHEREAS, LICENSEE proposes to design, install, operate and maintain a Memphis area Fiber Optic Communication Network ("Network") utilizing MLGW's electric distribution Poles and Conduit System (as defined hereinafter) to place its fiber optic cable; and,

WHEREAS, MLGW issued an RFP in September 1991 for the purpose of discovering reasonable rates and Pole attachment and Conduit System use provisions; and,

WHEREAS, MLGW is willing to permit, to the extent it may lawfully do so and on the terms hereinafter set forth, the attachment or MLGW installation of said fiber optic cables to MLGW's Poles and Conduit System, when in its judgement, such use will not interfere with its own service requirements, including considerations of safety and economy.

AGREEMENT

In consideration of the facts stated above, the mutual covenants and agreements of the parties, and other valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, IT IS AGREED:

I. DEFINITIONS

For the purposes of this Agreement, the following terms and phrases shall have the following meanings:

- A. "Actual Costs" means all costs of MLGW including engineering, labor, overtime and double time labor, material, transportation, equipment, loading, interest and administrative costs, not limited in any way by the estimate.
- B. "Attachment" means an attachment to a MLGW Pole or within a portion of MLGW's Conduit System of a fiber optic cable or associated (and authorized) equipment in a MLGW designated location, and in a MLGW specified manner. For purposes of permitting and prior authorization, such term applies whether the cable facilities are placed directly on MLGW's Poles or are overlashed onto existing communications wires on the Poles.
- C. "Conduit System" means MLGW's conduit, Innerduct, manholes, vaults, risers, pull-boxes and trenches.
- D. "Fiber Optic Telecommunications Network" or "Network" means that portion of the LICENSEE's system, located within the MLGW service area, consisting of all fiber optic cables, wires, lines, and associated equipment or facilities designed and constructed for the purpose of distributing, receiving, transmitting or producing electronic signals to and/or from locations within the City and its vicinity, and in accordance with the LICENSEE's Franchise in effect at the time of this Agreement. Such term shall not include fiber or associated equipment transferred to MLGW.
- E. "Innerduct" means flexible conduit installed inside a larger rigid conduit for the placement of fiber optic cable.
- F. "Joint User" means a party, other than MLGW or LICENSEE, which may attach to MLGW's Poles or occupy its Conduit System, including parties to a Joint Use Agreement.
- G. "LICENSEE's Expense" means LICENSEE's obligation to pay MLGW's Actual Costs as defined in the Agreement.
- H. "Make-Ready" means all work, as reasonably determined by MLGW, required to accommodate the LICENSEE's Network and/or to comply with all applicable engineering specifications and standards for the use of MLGW's Poles and Conduit System. Such work includes, but is not limited to, design engineering, supervision, administration, installation, inspection, repair and/or maintenance associated with the design, installation, rearrangement, operation and maintenance of such facilities.

- I. "MLGW Fiber System" means fiber optics and associated equipment that are transferred to MLGW pursuant to the terms of this Agreement, and as specified in Attachments A and B.
- L. "Permit" means written authorization of MLGW for LICENSEE to make, or maintain, Attachments to specific Poles pursuant to the requirements of the Agreement.
- K. "Pole" means a pole owned by MLGW used for the distribution of electricity that is capable of supporting Attachments for communications services.

II. SCOPE OF AGREEMENT

- A. Subject to the provisions of this Agreement, MLGW hereby grants LICENSEE a revocable, and nonexclusive license authorizing Licensee to install and maintain Attachments to MLGW's Poles and Conduit System.
- B. LICENSEE and MLGW agree to be bound by all provisions of this Agreement and of the Permit(s) issued pursuant to this Agreement.
- C. The parties agree that MLGW will issue a Permit(s) to LICENSEE only when MLGW determines, in its sole judgment, that (i) it has sufficient capacity to accommodate the requested Attachments, (ii) LICENSEE meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all applicable standards and specifications. The parties further agree that any access to MLGW's Poles and Conduit System made available to LICENSEE pursuant to this Agreement is to MLGW's reserve capacity, which may be reclaimed by MLGW for future electric service use, including the attachment of communications lines for internal MLGW operational requirements.
- D. No use, however lengthy, of any of MLGW's facilities, and no payment of any fees, charges or other compensation required under this Agreement, shall create or vest in LICENSEE any easements or other ownership or property rights of any nature in any portion of such facilities. After issuance of any Permit, LICENSEE shall be and remain a mere licensee. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of MLGW's rights to the MLGW facilities.

- E. Nothing in this Agreement shall be construed as granting LICENSEE any right to attach LICENSEE's communications facilities to any specific Pole or portion of the Conduit System or to compel MLGW to grant LICENSEE the right to attach to any specific Pole or portion of its Conduit System.
- F. LICENSEE is obligated to obtain all necessary certification, permitting, and franchising from Federal, state and local authorities prior to making any Attachments.
- G. The parties agree that this Agreement does not in any way limit MLGW's right to locate, operate and maintain its Poles and Conduit System in the manner that it believes will best enable it to fulfill its own service requirements.
- H. Nothing in this Agreement shall be construed to require MLGW to install, retain, extend, or maintain any Pole or portion of the Conduit System for use by the LICENSEE when such Pole or Conduit System is not needed for MLGW's own service requirements.
- I. Nothing in this Agreement shall limit, restrict, or prohibit MLGW from fulfilling any agreement or arrangement regarding Poles into which MLGW has previously entered, or may enter in the future, with Joint Users and others licensees not parties to this Agreement.
- J. This Agreement shall only apply to wood Poles and the Conduit System associated with the distribution of electric power and not to any other MLGW facilities, absent express written concurrence from MLGW.
- K. Nothing in this Agreement shall be construed to require MLGW to allow LICENSEE to use MLGW's Poles or Conduit System after the termination of this Agreement.
- L. LICENSEE agrees that this Agreement is limited to the uses specifically stated above in the Recitals and any other use shall be considered a breach of this Agreement.

III. MLGW FIBER SYSTEM

A. Transfer Of Optical Fibers To MLGW:

- 1. In consideration of MLGW's obligations set forth in this Agreement, including the future encumbrance of its infrastructure, LICENSEE agrees to transfer to MLGW six (6) optical fibers in a ring architecture connecting MLGW facilities with routing by way of MLGW's electric distribution system. Specific MLGW facilities to be served and the routing of such fiber shall be mutually agreed upon by the parties and incorporated into this Agreement as Attachment A ("Optical Fibers"). The connection equipment to be transferred

and the manner of such connections shall be mutually agreed by the parties and more particularly described in Attachment B ("Equipment"). As a general matter it is agreed that the route location of the fibers to be transferred to MLGW shall reasonably correspond with the proposed route of LICENSEE's Network as described in Attachment A, and said LICENSEE Network route shall be substantially completed before venturing to outlying areas. The Optical Fibers and the Equipment are collectively referred to in this Agreement as the "MLGW Fiber System." The transfer of ownership of the six (6) optical fibers shall be at zero (0) cost to MLGW with LICENSEE maintaining all of these fibers free of charge.

2. If and when LICENSEE elects to expand the fiber optic backbone of its Network beyond its initial proposed route as diagramed in Attachment A, to the extent such proposed route would utilize MLGW's Poles and/or Conduit System, LICENSEE shall provide MLGW an additional six (6) dark fibers and associated Equipment in a ring architecture along any portion of said proposed route in order to expand the MLGW Fiber System free of charge. MLGW shall have sixty days from receipt of written notification of the proposed expansion from LICENSEE to request such additional fibers and provide any necessary routing information. To the extent practical, upon request LICENSEE shall connect any such additional fibers to the MLGW Fiber System.. MLGW agrees to pay LICENSEE's cost of time and materials to reroute fibers and reconfigure the architecture in order to interconnect such networks. All additional fibers and equipment obtained by MLGW as the result of an expansion of LICENSEE's Network shall be maintained by LICENSEE free of charge.
3. LICENSEE further agrees to install additional cable spurs and equipment, to reroute MLGW's six optical fibers and to reconfigure MLGW's ring architecture at MLGW's written request. All such requests by MLGW for additional cable spurs and equipment shall be sold to MLGW by LICENSEE on the basis of LICENSEE's incremental cost for such fiber spurs and/or equipment. MLGW agrees to pay LICENSEE's cost of time and materials to reroute fibers and reconfigure the architecture. Fiber cables installed by LICENSEE at MLGW's request and fiber cables installed by MLGW shall, at MLGW's request, be connected by LICENSEE to MLGW's six (6) fiber ring transferred to MLGW by LICENSEE, as may be expanded from time to time pursuant to Article III.A.2. MLGW agrees to pay LICENSEE's cost of time and materials to connect these fibers. Additional cable spurs and equipment installed by LICENSEE shall be maintained by LICENSEE free of charge.

- B. Ownership Of Fiber And Equipment: The parties agree that MLGW shall only own the Optical Fibers, Equipment, additional cables spurs and equipment as described in Article III.A. and as listed on Attachments A and B provided under this Agreement and as may be amended by mutual agreement of both parties, and that the ownership of all other cables and other equipment related to the Network that is attached to MLGW's Poles or placed within its Conduit System shall be owned by LICENSEE.
- C. Title To MLGW Fiber System: Within twelve (12) months of the Contract Date, LICENSEE shall deliver to MLGW a Certificate of Ownership for the six (6) Optical Fibers and the Equipment as described in Article III.A, free and clear of all claims, liens and encumbrances except for any security interest granted by LICENSEE to its vendors or financial institutions for the construction of the Network. The Certificate of Ownership shall provide a complete list of all personal property provided to MLGW.
- D. Repair And Maintenance: All repair and maintenance of the Equipment and the additional equipment described in Article III and the cable containing the Optical Fibers and the additional cable spurs described in Article III shall be performed by LICENSEE or an individual or entity authorized by LICENSEE for the term of this Agreement without additional charge to MLGW.
- E. Service Interruption: LICENSEE shall be responsible for the installation and maintenance of all services as described in this Agreement and shall respond to a major service interruption within two (2) hours of MLGW's trouble report. A major service interruption is defined as having complete loss of any light signal between any of the MLGW buildings. All other services maintenance or repairs shall be performed in a commercially reasonable time.
- F. Service Interruptions Caused By Licensee Maintenance: LICENSEE's maintenance of its Network normally will not result in a loss or interruption of MLGW's optical signal. In the event that LICENSEE's maintenance should reasonably be expected to require the loss or interruption of MLGW's optical signal, to the extent possible LICENSEE shall so notify MLGW within a reasonable time but not later than 48 hours prior to such anticipated loss or interruption.

IV. FORCE MAJEURE - LICENSEE:

Notwithstanding any other term or provision in this Agreement, LICENSEE shall not be liable to MLGW or any other person, firm, or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the control of LICENSEE. Such causes shall include: acts of God or any civil or military authority, national emergencies, insurrections, riots or wars. Restoration of any part of the Network due to incidents of Force

Majeure or otherwise beyond the control of either party will be at LICENSEE's sole cost and expense.

V. INDEMNIFICATION BY LICENSEE AND INSURANCE:

- A. LICENSEE shall defend, indemnify, protect and hold harmless MLGW, its officers, agents, and employees from any and all claims, losses, liabilities, causes of actions, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, reasonable attorney fees) arising out of or resulting from the acts or omissions of LICENSEE, its officers, agents, employees, contractors, successors, or assigns. LICENSEE shall, at its own expense, defend MLGW and its officers, agents and employees against any and all such claims, actions and demands and shall indemnify MLGW and its officers, agents and employees for all costs and expenses it may incur in connection therewith. If LICENSEE refuses to undertake the defense of a claim described in this section, then MLGW, its officers, agents and employees shall have the right to take all actions they deem necessary and appropriate to defend the claim, and shall be reimbursed by LICENSEE for all costs incurred in defending such claim as provided above in this section, including, without limitation, reasonable attorney fees.
- B. Further, LICENSEE agrees to pay all of MLGW's costs and expenses, including, but not limited to, reasonable attorney fees, court costs, and interest incurred in any litigation commenced by MLGW to collect or enforce indemnification obligations contained in this section.
- C. LICENSEE shall obtain and maintain in full force and effect the following insurance covering all insurable risks associated with its ownership and operation of the Network:
 - 1. LICENSEE shall obtain and maintain in full force and effect a comprehensive occurrence (not claims made) general liability insurance policy, including completed operations, independent contractors and contractual liability coverage, in an amount not less than one million dollars per occurrence.
 - 2. LICENSEE shall also obtain and maintain in full force and effect in occurrence (not claims made), automobile liability insurance policy covering any vehicle used in connection with its activities under this Agreement in an amount not less than one million dollars per occurrence.
 - 3. LICENSEE shall obtain and maintain an umbrella liability policy certificate in addition to the certificates listed above with minimum acceptable limits of liability to be five million dollars per occurrence.

4. LICENSEE shall obtain and maintain in full force and effect all workers compensation and employers liability insurance required by Tennessee law.
5. MLGW and its officers, employees and agents shall all be named as additional insureds in all policies required under this section of this Agreement.
- D. LICENSEE shall provide MLGW with thirty (30) days prior written notice of the cancellation, modification, or expiration of any insurance policy required under this Agreement.
- E. LICENSEE shall provide MLGW with a current Certificate of Insurance evidencing all of the insurance required above in this Article prior to the installation of its Network and at times thereafter while this Agreement remains in effect. Each insurance certificate shall state that the issuer of the insurance certificate shall give MLGW thirty (30) days prior written notice of any cancellation, modification or expiration of any insurance policy referred to in the certificate. Replacement certificates shall be filed with MLGW at least thirty (30) days before the expiration of the current insurance policies.
- F. All insurance required by this section to be maintained by LICENSEE shall be affected by valid and enforceable policies issued by insurers authorized to conduct business in Tennessee and in good standing of the laws of Tennessee.
- G. Upon MLGW's request from time to time, LICENSEE shall deliver duplicate originals of such policies and renewal policies for such insurance to MLGW.

VI. GENERAL LIMITATION OF LIABILITY OF LICENSEE:

- A. Service Interruptions: In the event service is interrupted for any reason whatsoever, except for the negligent or willful acts or omissions of LICENSEE or its agents or representatives, or LICENSEE equipment failure LICENSEE shall not be liable to MLGW for any damages, including, without limitation, any direct, indirect, consequential, special, actual, punitive or any other damages, or for any lost profits of any kind whatsoever. Except for damage due to the negligent or willful acts or omissions of LICENSEE or its agents or representatives, LICENSEE's sole obligation to MLGW in the event service is interrupted, for whatever reason, is to use its best efforts to repair the Service within a commercially reasonable time.
- B. Damage: LICENSEE shall pay MLGW for any damage caused to MLGW's facilities and the facilities of others by LICENSEE's negligence, omission, willful acts or by LICENSEE's equipment malfunction. LICENSEE shall indemnify, defend and hold harmless MLGW and its agents and representatives from any and all claims, demands and causes of actions including the payment of MLGW's reasonable attorney fees in

attempting to require performance of LICENSEE under the terms of this Agreement. LICENSEE shall notify MLGW promptly in case of such damage to any of its facilities.

- C. All Other Liability: LICENSEE, at its own expense, will indemnify MLGW and hold it harmless with respect to any and all loss, damage, liability or expense asserted against MLGW by a third party on account of any property damage or personal injury caused by any negligence or willful misconduct of LICENSEE or its agents or representatives arising out of its performance of this Agreement. LICENSEE's obligations under the immediately preceding sentence shall be subject to MLGW's duty to take reasonable precautions so as not to interfere with the facilities or service provided by LICENSEE.
- D. Protection Against Claims For Improper Programming: LICENSEE shall indemnify, save harmless and insure MLGW with respect to all material transmitted over LICENSEE's Network from and against any and all claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use thereof and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of LICENSEE's equipment whether arising from the use of LICENSEE's equipment in combination with MLGW's Poles and Conduit System.
- E. Indemnification For Patent Infringement: In the event that any claim, demand or liability is made or asserted against MLGW by any third party based upon allegations that the Network violates any patent laws, then, and in such event, LICENSEE shall indemnify, defend and hold harmless MLGW and its agents and representatives of and from any, and all such claims, demands, lawsuits and liability, including the payment of MLGW's legal fees.
- F. Non-Waiver of Indemnification: No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by MLGW of any applicable limits on municipal liability available to MLGW. No indemnification provision contained in this Agreement under which Licensee indemnifies MLGW shall be construed in any way to limit any other indemnification provision contained in this Agreement.

VII. PERMITS, LICENSES AND RIGHTS-OF-WAY:

- A. In order to construct, place and maintain its Network, LICENSEE will need to negotiate with various Federal, State, County and local authorities and private entities for permits, license, rights-of-way, franchise agreements and property easements. The cost of such permits, licenses, rights-of-way, franchise agreements and property easements shall be born by LICENSEE. If LICENSEE is unable to obtain such

permits, licenses, rights-of-way, franchise agreements, and property easements to install and operate its Network within one year of this Agreement, under terms acceptable solely to LICENSEE, either party may terminate this Agreement without liability to the other party.

- B. LICENSEE shall use its best efforts to obtain such permits, licenses, rights-of-way, franchise agreements and property easements. LICENSEE shall provide to MLGW copies of all such permits, licenses, rights-of-way, franchises, agreements and property easements prior to start of work.

VIII. FURTHER APPROVALS:

LICENSEE shall be solely responsible for obtaining all necessary permits, consents, or approvals, either public or private which may be necessary prior to the beginning of construction, and this Agreement shall be contingent upon acquisition of all such permits, consents or approvals under terms acceptable solely to LICENSEE. LICENSEE shall provide to MLGW written consent from private property owner or owners, stating that LICENSEE has permission to ingress and egress and also to construct and operate its facilities over and under and upon the MLGW owned Poles located on said private property. LICENSEE shall use its best efforts to obtain such permits, consents or approvals.

IX. NON-EXCLUSIVE:

MLGW grants LICENSEE non-exclusive rights for its attachments on Poles or in the Conduit System. MLGW does not suggest, imply or guarantee that LICENSEE will have sole occupancy of a Pole or any portion of the Conduit System.

X. ATTACHMENT AND INSTALLATION PROCEDURES:

No attachment, placement or installation shall be made by LICENSEE on any Poles before written permission is received from MLGW. The procedure and forms to be used in making application and receiving permission for attachment, placements or installations shall be as provided for as described in this Agreement. Such permission shall not be unreasonably withheld. All installations in the Conduit System must be approved and performed by MLGW. LICENSEE shall reimburse MLGW for the Actual Costs incurred, as herein defined.

XI. OVERHEAD APPLICATION REQUIREMENTS:

- A. Before making attachments to any Poles, including the overflashing of existing Attachments, LICENSEE shall make application and receive a Permit therefore, with respect to each Pole in the form of Attachment C. An individual Permit may cover between 1 and 25 contiguous Poles. If the Pole is located on public right of way, LICENSEE shall obtain all necessary permits from City of Memphis, Shelby County

or State of Tennessee and present to MLGW at the time a request is made to attach to said Poles.

- B. The method and location of installation on Poles must first be approved by MLGW. Such approvals shall not be unreasonably withheld. LICENSEE shall furnish MLGW with a construction drawing indicating the location of and specifying the type of cable to be installed with a target date for completion. Authorized Pole attachments under this Agreement are restricted to the designated communication space, as indicated in Attachment D, and shall not be placed within the power supply space.
- C. There is a non-refundable application fee of \$50 per Pole attachment Permit. This fee may be applied against any necessary Make Ready expenses due MLGW from LICENSEE. The fee may be adjusted annually to reflect changes in the engineering, administrative and processing costs of MLGW in reviewing permit applications.
- D. There shall be no additional Pole Attachment fee for LICENSEE to overlash its own cables, provided that the LICENSEE has furnished MLGW with prior notification through the permitting process. Overlashing of LICENSEE's facilities by non-affiliated third-parties is prohibited absent a separate License Agreement with MLGW.
- E. MLGW will at intervals not exceeding five (5) years perform an actual inventory of the Pole Attachments in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which LICENSEE has attachments. Such field check shall be made jointly by both parties and shall be at LICENSEE's Expense.
- F. Notwithstanding any other revenues available to MLGW, if through an inventory or other means, MLGW discovers that LICENSEE has made Pole Attachments, including overlashing, without first obtaining a Permit from MLGW, the LICENSEE shall pay a Pole Attachment rate for such Attachments that is equal to three (3) times the applicable rate specified under this Agreement.

XII. REARRANGEMENT AND RELOCATION OF POLE ATTACHMENTS AND POLE REPLACEMENT ("OVERHEAD WORK"):

- A. In the event that LICENSEE requests Overhead Work and MLGW agrees to perform such Overhead Work, MLGW shall prepare a cost estimate for Overhead Work. As a condition of further consideration of the request, LICENSEE shall acknowledge and approve the estimate. LICENSEE's approval establishes its obligation to pay MLGW's Actual Costs, as herein defined.

- B. When a request has been approved and MLGW has received payment for Overhead Work, MLGW will proceed with the Overhead Work.
- C. Rearrangement and Relocation of Pole Attachments (Make Ready Work):
 - 1. LICENSEE shall compensate MLGW for the Actual Costs for rearranging, transferring, and/or relocating MLGW facilities on Poles in order to accommodate LICENSEE's Attachment.
 - 2. LICENSEE shall reimburse the owner or owners of other facilities attached to MLGW Poles for any expense incurred by them for rearranging or transferring such facilities in order to accommodate LICENSEE's facilities.
- D. Pole Replacement
 - 1. LICENSEE shall compensate MLGW for the Actual Costs for replacing any Pole that must be replaced in order to be able to support LICENSEE's Attachments.
 - 2. If LICENSEE is the first communications company to require Pole replacement, LICENSEE must absorb the Actual Costs of the project. If a second communications company or other user attaches to the same Pole within a period of sixty months, then this second organization must reimburse the original attachee fifty per cent of the Actual Costs for the original Pole replacement. After sixty months the attachment will be handled as a routine attachment. For all Joint Use Poles, the above condition shall not apply to BellSouth.
 - 3. If LICENSEE is the first communications company to attach to a Pole in the best and most proper manner and there is no suitable space for a second communications company then the second communications company must request the Pole be replaced for a taller Pole and must absorb the Actual Costs of the Pole replacement. For all Joint Use Poles, the above condition shall not apply to BellSouth.
- E. A two foot (2') clearance shall be maintained on Poles that are in Joint Use with BellSouth.

XIII. GUYS AND ANCHOR ATTACHMENTS:

- A. LICENSEE shall at its own expense and to the satisfaction of MLGW place guys and anchors to sustain any unbalanced loads caused by LICENSEE's Attachments. When, in unusual circumstances, LICENSEE determines that it is necessary or desirable for

it to attach its guys to anchors owned by MLGW, it may make application to do so in a manner similar to that outlined in Article XI above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to anchors. In the event that any anchor or guy to which LICENSEE desires to make Attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, MLGW will notify LICENSEE of the changes necessary to provide an adequate anchor or guy, together with the estimated cost thereof to LICENSEE. LICENSEE will compensate MLGW in advance for the full estimated expense including engineering and administrative cost for changing the guy and anchor. LICENSEE shall be obligated to pay MLGW's Actual Costs for changing the guy and anchor, not limited in any way by the estimated expense.

- B. For anchors in place to which LICENSEE wishes to attach, LICENSEE shall pay to MLGW a one time installation fee of \$36.00 per anchor upon initial installation only, for the use of each of MLGW's anchors to which Attachments are made.

XIV. INSTALLATION OF GROUNDS:

When MLGW is requested by LICENSEE to install grounds or make connections to MLGW's electric system neutral, LICENSEE shall on demand reimburse MLGW for the Actual Costs thereby incurred on initial installation only.

XV. POLES NOT COVERED BY THIS AGREEMENT:

Should LICENSEE attach any of its facilities to Poles not covered by this agreement or should LICENSEE attach any of its facilities to Poles that MLGW has a Joint Use agreement, it shall maintain proper clearance between such equipment and communication lines and street lighting wires and shall otherwise install, maintain and remove the equipment on such Poles in such manner as to satisfy the requirements of this Agreement with respect to safety, good workmanship and avoidance of hazard.

XVI. POLES NOT ALLOWED TO BE JOINT:

Upon notice from MLGW to LICENSEE that the use of any Pole is forbidden by municipal authorities or property owner, the permit covering the use of such Pole shall immediately terminate and the cables, wires and appliances of LICENSEE shall be removed, within a reasonable length of time, from the affected Pole.

XVII. REMOVAL OF ATTACHMENTS FOR OVERHEAD TO UNDERGROUND CONVERSION:

Upon notice from MLGW to LICENSEE that MLGW's electric system is to be converted from overhead to underground in a specified area and the Poles will be removed, the permit covering the use of said Poles shall immediately terminate and the cables, wires and appliances of LICENSEE shall be removed promptly from the affected Pole.

XVIII. CODES, RULES, AND STANDARDS:

LICENSEE's facilities, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of the latest revision of the National Electric Safety Code, as the same may be amended from time to time, the National Electrical Code ("NEC"), the regulations of the Occupational Safety and Health Act ("OSHA") and in compliance with any rules or orders now in effect or that may hereafter be issued by MLGW or other authority having jurisdiction. LICENSEE's attachments shall be made in accordance with Attachment D and the location of any attachment may be redesignated from time to time.

XIX. REMOVAL OF ATTACHMENTS:

LICENSEE may at any time remove its attachments from any Pole of MLGW, but shall immediately give MLGW written notice of such removals in the form of Attachment E. No refund of any Pole attachment fee will be due on account of such removal.

XX. CONDUIT APPLICATION REQUIREMENTS:

- A. LICENSEE shall submit for approval by MLGW's authorized representative Attachment F as application for use of MLGW's Conduit System. MLGW reserves the right to determine routes and portions of the Conduit System to be used.
- B. If Conduit System occupancy is to be surrendered, Attachment G shall be submitted to MLGW. The date this application is received by MLGW shall serve as the effective date. No refund of any conduit occupancy fee will be due on account of such surrender.
- C. While some of the standards and technical requirements for LICENSEE's cable placed with MLGW's Conduit System are set forth herein, MLGW reserves the right to specify the type of construction required in situations not otherwise covered. In such cases, MLGW will at its discretion furnish to LICENSEE written materials which will specify and explain the required construction. LICENSEE reserves the right to terminate this Agreement in the event it disagrees with MLGW's specification of the type of or cost of construction required in situations not otherwise covered.

LICENSEE shall use its best efforts to negotiate disputed specifications before termination.

- D. LICENSEE shall furnish MLGW with a construction drawing indicating the location of and specifying the type of cable to be installed with a target date for completion of construction by MLGW.

XXI. CONDUIT SYSTEM PREPARATION, INNERDUCT INSTALLATION AND CABLE INSTALLATION ("UNDERGROUND WORK")

- A. Subject to MLGW's approval of LICENSEE's application for use of the Conduit System, MLGW shall prepare a cost estimate for Underground Work. As a condition of further consideration of the application, LICENSEE shall acknowledge and approve the estimate. LICENSEE's approval establishes its obligation to pay MLGW's Actual Costs, not limited in any way by the estimate.
- B. When an application for Conduit System use has been approved and MLGW has received payment for Underground Work, MLGW will proceed with the Underground Work.
- C. Conduit System Preparation
1. LICENSEE shall compensate MLGW for the Actual Costs for clearing obstructions, making repairs and dig-ups, rearranging, transferring and relocating MLGW's Conduit System facilities and any other work required to prepare the Conduit System for the installation of Innerduct and/or LICENSEE's cable.
 2. LICENSEE shall reimburse the owner or owners of other facilities occupying MLGW's Conduit System for any expense incurred by them for rearranging or transferring such facilities to accommodate LICENSEE's Conduit System use.
- D. Innerduct Installation: Any use of Innerduct in MLGW manholes and Conduit System shall be subject to MLGW approval and shall be installed by MLGW at LICENSEE's Expense. When Innerduct is installed, MLGW will install four (4) sections of Innerduct per span of conduit. LICENSEE shall pay one-fourth (1/4) of the purchase price of the Innerduct and one-fourth (1/4) of the Actual Costs of installing four (4) sections of Innerduct in said conduit. If MLGW installs three (3) or (2) sections of Innerduct per span of conduit, then LICENSEE shall pay one-third (1/3) or one-half (1/2), respectively, of the purchase price of the Innerduct and one-third (1/3) or one-half (1/2), respectively, of the Actual Costs of installing the Innerducts in said conduit.

- E. Cable Installation: LICENSEE shall compensate MLGW for the Actual Costs of installing LICENSEE's cable.

XXII. OCCUPANCY OF CONDUIT SYSTEM:

For the purpose of computing the total conduit occupancy fee due hereunder, the length of the conduit shall be measured from the center to the center of manholes, or from the center of a manhole to the end of MLGW's Conduit System occupied by LICENSEE's cable. Occupancy fees will not be charged for conduit installed under Article XXV.

XXIII. ELECTRICAL DESIGN SPECIFICATIONS:

- A. Cables with an outer metallic sheath shall be bonded at each manhole by MLGW. No cable of LICENSEE's shall be permitted in MLGW's Conduit System if such cable causes electrical interference on any facilities of MLGW. Such interference shall be removed by MLGW at LICENSEE's Expense. LICENSEE's power supplies will not be permitted in MLGW's Conduit System.
- B. LICENSEE's cable shall not be designed to use the earth as the sole conductor for any part of LICENSEE's circuits.
- C. Separation of communication and electrical conductors shall be as stipulated in the National Electrical Safety Code.
- D. LICENSEE shall not circumvent MLGW's corrosion mitigation measures.
- E. LICENSEE cable shall be compatible with MLGW's facilities so as not to damage any facilities of MLGW by corrosion or otherwise. LICENSEE shall be liable to MLGW for any damages occasioned by such corrosion or otherwise.

XXIV. PHYSICAL DESIGN SPECIFICATIONS:

- A. LICENSEE's cables bound or wrapped with cloth or having any kind of fibrous covering or impregnated with an adhesive material shall not be permitted in MLGW's Conduit System.
- B. Splices and terminations in LICENSEE's underground cables shall be located only in termination boxes installed by LICENSEE in a location external to MLGW's Conduit System. Splices, termination boxes and associated equipment shall not be allowed in MLGW's manholes or any other part of MLGW's Conduit System. These splices and terminations shall be made by LICENSEE.

- C. Installation of a small coil of fiber optic cable, approximately 10 feet in length or smaller, in a MLGW manhole will be allowed at MLGW's sole discretion.
- D. The purpose of this cable coil is to provide excess cable for slack requirements and emergencies. The cable coil shall not be used for splices, terminations or installation of a termination box.
- E. Cable coils, if allowed by MLGW, will be installed by MLGW at LICENSEE's Expense. Cable coil location inside the manhole will be determined by MLGW.
- F. The maximum permissible diameter of any cable and/or Innerduct and the number of cables and/or Innerduct to be placed in any of MLGW's conduits shall be determined by MLGW based upon the size and shape of the conduits and the size of the existing cable in the conduit. LICENSEE's cable and/or Innerduct installed for LICENSEE's use will not be permitted in any ductline where less than two vacant conduits remain after the installation of LICENSEE's cable and/or Innerduct installed for LICENSEE's use.
- G. Reels shall be constructed with a maximum flange diameter of 90 inches and width of 55 inches. The arbor hole shall admit a spindle of 4 1/2 inches without binding.

XXV. CONNECTION OF LICENSEE'S CONDUIT:

Any section of conduit which connects with MLGW's manhole or transformer vault shall be installed by MLGW at LICENSEE's Expense. The maximum length of conduit shall not exceed five (5) feet and shall be maintained at LICENSEE's Expense.

XXVI. WORK RULES:

- A. MLGW's manholes or transformer vaults shall not be opened or tampered with by an employee, agent or contractor of LICENSEE.
- B. No employee, agent or contractor of LICENSEE shall enter or work in any of MLGW's manholes or transformer vaults.
- C. Clearing obstructions, repairs, dig-ups and any other work required to make a conduit usable for the initial placing of LICENSEE's cable or Innerduct installed for LICENSEE's use shall be done by MLGW at LICENSEE's Expense.
- D. MLGW shall place, remove, change, and maintain all cable in MLGW's Conduit System with materials supplied by LICENSEE, approved by MLGW and delivered in a timely manner to the location designated by MLGW.

- E. MLGW and LICENSEE'S cable shall be permanently identified by tags at each manhole or other access opening in the Conduit System. Tags shall be of a type and wording satisfactory to MLGW. All cost of this identification shall be at LICENSEE's Expense.
- F. Where manholes or transformer vaults must be pumped in order to allow work operations to proceed, pumping shall be done by MLGW at LICENSEE's Expense.
- G. Any leak detection liquid or device used by LICENSEE's agents, employees or contractors shall be of a type approved in writing by MLGW.
- H. When LICENSEE, its agents, employees or contractors are working around any part of MLGW's Conduit System located in the streets, alleys, highways, or other public rights-of-way or easements granted to MLGW or City of Memphis, the protection of persons and property shall be provided by LICENSEE in an adequate and satisfactory manner; LICENSEE shall be solely responsible for providing adequate barricades, warning lights, traffic cones, danger signs and other similar devices to protect all traffic, persons and property around the work area from danger.
- I. MLGW's authorized representative shall have the authority to terminate LICENSEE's work operations around MLGW's manholes or transformer vaults if, in the sole discretion of MLGW's authorized representative, any hazardous condition arises or any unsafe practice is being followed by LICENSEE's agents, employees or contractors. Said discretion shall not be unreasonably executed.

XXVII. LICENSEE REPRESENTATIVE:

A LICENSEE representative shall be present during all MLGW installation of underground fiber cable. The LICENSEE representative shall be knowledgeable and experienced in underground fiber cable installation and shall be authorized by LICENSEE to answer questions and make decisions on LICENSEE's behalf regarding problems and questions that occur during MLGW installation of underground cable. The LICENSEE representative shall be furnished at LICENSEE's expense.

XXVIII. EMERGENCY CONDITIONS:

In cases of emergency:

- A. MLGW's work shall take precedence over any and all operations of LICENSEE.
- B. MLGW may pull a cable into any of MLGW's conduits either occupied by or scheduled to be occupied by LICENSEE's facilities. Should it become necessary for MLGW to use a conduit occupied by LICENSEE, LICENSEE's cable may be

removed by MLGW. MLGW will endeavor to make other conduit space available for the displaced facilities of LICENSEE as soon as possible.

- C.. MLGW may rearrange LICENSEE's cable at LICENSEE's Expense when necessary to make maximum use of its electric system.
- D. LICENSEE shall provide MLGW a point(s) of contact for emergency and non-emergency twenty-four (24) service.

XXIX. DECOMMISSIONING:

MLGW may, in its sole judgment, remove any Poles or portions of its Conduit System not needed for its service requirements; and LICENSEE shall, upon written notification from MLGW, remove its attachments from such Poles and portions of the Conduit System.

XXX. INSTALL AND TRANSFER FACILITIES:

LICENSEE shall, at its own expense make and maintain said attachments in safe conditions and in good repair, or relocate or replace its facilities placed on said Poles or in conduit or perform other work that may be required by MLGW; provided, however, that in case of emergency, MLGW may arrange to relocate, replace or transfer LICENSEE's facilities at LICENSEE's expense.

XXXI. CHARGES FOR INCOMPLETE WORK:

In the event that requests for attachments and/or use of the Conduit System are made by LICENSEE and steps are taken by MLGW to carry out the request by performing necessary engineering and administrative work and the job is canceled causing the job not to be done or completed, LICENSEE shall reimburse MLGW for the Actual Costs incurred by MLGW.

XXXII. INSPECTION:

MLGW reserves the right to inspect each new installation of LICENSEE and to make periodic inspections, as conditions may warrant, of that portion of LICENSEE's Network that is attached to MLGW's Poles and placed in MLGW's Conduit System. Such inspections, or the failure to make such inspections, shall not operate to relieve LICENSEE of any responsibility or obligation or liability assumed under this Agreement.

XXXIII. PROTECTION AND INDEMNITY:

MLGW reserves to itself, its successors and assigns, the right to maintain its Poles and Conduit System and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements. MLGW shall exercise reasonable precaution to prevent

damage to, or interference with the operation of the equipment of LICENSEE, but MLGW shall not be liable for any such damage or interference which may arise out of the use of MLGW's Poles or Conduit System. LICENSEE shall exercise special precautions to avoid damage to facilities of MLGW or of other authorized users of said Poles or Conduit System; and LICENSEE hereby assumes all responsibility for any and all damage to facilities of said MLGW or other authorized users arising out of or caused by the erection, maintenance, installation, presence use or removal of LICENSEE's facilities. LICENSEE shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage and hereby agrees to reimburse such owner for the expenses incurred in making the necessary repairs and replacement.

XXXIV. TIME TABLE:

LICENSEE agrees to have the MLGW Fiber System operational within six (6) months of receipt of all approvals as stated in this Agreement. If within twelve (12) months from the Contract Date, LICENSEE has not received all necessary approvals, either party may cancel this Agreement without liability.

XXXV. ASSIGNMENT:

LICENSEE may assign or transfer any of its rights under this Agreement in whole or in part, by merger, consolidation, reorganization or change in the ownership or control of LICENSEE's business or by other means, provided that LICENSEE gives MLGW thirty (30) days advance written notice of such transaction. If any cable containing the Optical Fibers is sold, transferred or assigned by LICENSEE, the new owner or operator of the cable shall be required by LICENSEE to acknowledge in writing to MLGW that maintenance and repair will continue under the same terms and conditions set forth in this Agreement and that the new owner or operator shall be bound by all terms of this Agreement to the full extent as is LICENSEE.

XXXVI. ADDITIONAL PROVISIONS:

- A. The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized parties in writing.
- B. The provision of the Service will not create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either LICENSEE or MLGW.

- C. LICENSEE shall not, without the prior written consent of MLGW use any of its facilities attached to MLGW's Poles, or installed in MLGW's Conduit System, for any purpose other than that provided in this Agreement. Whenever, in the reasonable judgement of MLGW, LICENSEE has used its facilities for any purpose not authorized herein, MLGW shall forthwith notify LICENSEE. Upon receipt of such notice, LICENSEE shall as promptly as practicable (and in no later than twelve hours after receipt of such notice) cease such use complained of in the notice. Failure to do so or repeated unauthorized use shall constitute a default of LICENSEE's obligations and, notwithstanding any other provision of this Agreement, MLGW may at its option forthwith terminate this agreement.
- D. No subsequent agreement between MLGW and LICENSEE concerning the Service shall be effective or binding unless it is made in writing by authorized representatives of the parties hereto and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein.
- E. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.
- F. The Parties acknowledge and agree that this Agreement constitutes the entire Agreement between MLGW and LICENSEE, and supercedes all prior agreements and understandings, both oral and written, with respect to the subject matter hereof. This Agreement may not be modified or terminated excepted as provided herein.
- G. LICENSEE and MLGW acknowledge and agree that all material terms and conditions of this Agreement, including but not limited to the compensation requirements specified in Articles III and XXXIX, are essential and non-severable components of this Agreement, and that if any such material requirements are held to be unenforceable under applicable law, this Agreement shall thereupon terminate.
- H. Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

XXXVII. NOTICE:

Notices under this Agreement shall be in writing and delivered to the persons whose names and business addresses appear below or as otherwise provided for by proper notice hereunder and the effective date of any notice under this Agreement shall be the date of delivery of such notice, not the date of mailing.

If to LICENSEE:

Ward Huddleston
7535 Appleton Dr.
Memphis, TN 38133

If to MLGW:

Memphis Light, Gas and Water
220 South Main Street
Memphis, TN 38103
Attention: Contract Management

XXXVIII. RIGHTS:

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by MLGW, by contract or otherwise, to others not parties to this Agreement, to use any Poles or portions of the Conduit System covered by this Agreement; and MLGW shall have the right to continue and extend such rights or privileges to subsequent licenses. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

XXXIX. OTHER COMPENSATION:

- A. In addition to providing and maintaining six (6) dark fibers as specified in Article III and Attachments A and B, LICENSEE also agrees to make quarterly payments to MLGW on March 1, June, September 1 and December 1 of each year. LICENSEE payments to MLGW shall be of the greater dollar amount of the two payment options:

1. Payment Option One:

- a. Initial Pole attachment fee of \$17.28 for each Pole attachment for a twelve (12) month period. No additional fee is required for overlash, if such overlash is owned by the LICENSEE or its affiliate, and is authorized pursuant to a Permit.
- b. Initial Conduit System occupancy fee of \$ 2.64 for each foot of occupied conduit and Innerduct for a twelve (12) month period
- c. The Pole Attachment and Conduit System occupancy fees ("Fees") shall be adjusted annually to equal the purchasing power of the previous year, except that in no event shall the amount of the Fees decrease. The Fees shall be adjusted by any change in the Index now known as "United States Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, base period 1982-84 = 100, (CPI-U),"

hereinafter referred to as the "Index". The parties agree that the May 2000 Index is one hundred seventy-one point three (171.3). If such Index shall be discontinued with no successor or comparable successor Index, the parties shall attempt to agree upon a substitute formula, if the parties are unable to agree upon a substitute formula, MLGW may at its discretion adopt a widely used comparable formula.

- i. The first adjustments shall be made on the one year anniversary of the Contract Date and shall be accomplished by multiplying the aforementioned initial Pole Attachment fee and the initial Conduit System occupancy fee ("Initial Fees") by a fraction, the numerator of which shall be the most recently published monthly Index preceding the one year anniversary of the Contract Date, the denominator of which fraction shall be the published monthly Index twelve months prior to the Index used in the numerator. Said sums shall be added to the Initial Fees to determine the new Fees. The new Fees shall be used to calculate the dollar amount due under Payment Option One for each of the four quarterly payments that follow the one year anniversary of the Contract Date.
- ii. All succeeding adjustments to the Fees shall be made annually on the anniversary of the Contract Date and shall be accomplished by multiplying the then current Fees by a fraction, the numerator of which shall be the most recently published monthly Index preceding the current anniversary of the Contract Date, the denominator of which fraction shall be the published monthly Index twelve months prior to the Index used in the numerator. Said sums shall be added to the then current Fees to determine the new Fees. The new Fees shall be used to calculate the dollar amount due under Payment Option One for each of the four quarterly payments that follow the current anniversary of the Contract Date.

or

2. Payment Option Two:

- a. Three percent (3%) of LICENSEE's Gross Revenue derived from rent or sale of fiber optic network services provided on LICENSEE's Network. Gross Revenue shall be as shown in independently audited annual financial statements, a copy of which shall be provided to MLGW twelve (12) months after the Contract Date and annually on that day thereafter. Fiber optic network services include sale, lease or

rent of fibers or capacity or bandwidth between any points on LICENSEE's Memphis Network.

- B. If MLGW does not receive any fee or other amount owed within thirty (30) days after it becomes due, Licensee, upon receipt of ten (10) days written notice, shall pay interest to MLGW, compounded daily from the date due until the date paid, at the rate of one percent (1%) per month.

XL EXPENSES:

LICENSEE shall be responsible for reimbursing MLGW for all expenses as stated throughout this Agreement. Such expenses shall include all engineering, labor, overtime and double time labor, material, transportation and equipment used for LICENSEE work to be inclusive of all loading, interest and administrative costs. MLGW will provide monthly invoices for work that has occurred under this Agreement. Payment for such work shall be made within thirty (30) days after receipt of invoice. Non-payment of an invoice shall constitute a default of this Agreement. In the event of such default, MLGW shall be entitled to recover the full amount due under this Article plus any reasonable expenses or collection including attorneys fees and court costs.

XLI. TERM:

This Agreement shall become effective on the Contract Date above written; and if not terminated in accordance with the provisions herein, shall continue in effect for a term of not less than thirty (30) years from the Contract Date. Either party may terminate the Agreement at the end of said thirty (30) year period or at any time thereafter by giving at least six (6) months prior written notice. Such termination in no way exempts payment for Pole attachment and conduit occupancy prior to the actual removal of all facilities. Upon termination of the Agreement in accordance with any of its terms, LICENSEE after receiving notice of intent to terminate shall immediately remove its cables, wires and appurtenances from all Poles or conduit of MLGW. If not so removed, MLGW shall have the right to remove them at LICENSEE's Expense and without any liability therefor, and LICENSEE agrees to pay the Actual Costs thereof within ten (10) days after it has received an invoice from MLGW.

XLII. RECEIVERSHIP, FORECLOSURE, OR ACT OF BANKRUPTCY:

- A. The Pole and Conduit System use of this Agreement granted hereunder shall at the option of MLGW cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of LICENSEE whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the agreement; and
 2. Such receivers or trustees shall within said one hundred twenty (120) days, execute an agreement duly approved by MLGW having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.
- B. In the case of foreclosure or other judicial sale of the plant, property and equipment of LICENSEE, or any part thereof, including or excluding this Agreement, MLGW may service notice of termination upon LICENSEE and the successful bidder at such sale, in which event the Agreement herein granted and all rights and privileges of the Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
1. MLGW shall have approved the transfer of this Agreement, as and in the manner in this Agreement provided; and
 2. Unless such successful bidder shall have covenanted and agreed with MLGW to assume and be bound by all the terms and conditions to this Agreement.

XLIII. TRANSFER RIGHTS OF ATTACHMENTS:

LICENSEE shall not assign, transfer, sublease or resell the rights of attachments hereby granted to it, or the rights to use facilities so attached to MLGW's Poles or placed in MLGW's Conduit System, without prior consent in writing of MLGW. Failure of LICENSEE to give such notice shall be cause for termination of this Agreement.

XLIV. PERFORMANCE BOND:

LICENSEE shall furnish a Performance Bond (form attached) executed by a surety company acceptable to the Board of Light, Gas and Water Commissioners which is duly authorized to do business in the State of Tennessee, in the amount of Two Hundred Thousand Dollars (\$200,000.00) as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

XLV. DEFAULT:

If MLGW or LICENSEE shall fail to comply with any of the terms or provision of this Agreement, or default in any of its obligations under this Agreement and shall fail within thirty (30) days after written notice from the other party to correct such default or non-compliance, the party may, at its option, terminate this Agreement.

XLVI. TERMINATION:

In the event of termination that is not the fault of MLGW, LICENSEE shall compensate MLGW for all Actual Costs and Expenses incurred as of the date of termination.

XLVII. JURISDICTION:

Any and all disputes arising out of this Agreement shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions relating to the validity, construction, interpretation and enforcement of this Contract shall be instituted and litigated in the Courts of Tennessee, in accordance herewith the parties to this Contract submit to the jurisdiction of the courts of Tennessee, located in Shelby County, Tennessee.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

MEMPHIS LIGHT, GAS AND WATER
DIVISION
City of Memphis, Tennessee

President

APPROVED:

Attorney, Board of Light, Gas and Water
Commissioners

WITNESS:

ATTEST:

Secretary-Treasurer, Board of Light, Gas
and Water Commissioners

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